IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18161 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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RAJESH RAMNIKLAL RATHOD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NILESH M SHAH for the Petitioner
MS MANISHA L SHAH, A.G.P. for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 31.03.2004 by which the respondents have placed him on fixed monthly salary of Rs. 4000/- per month instead of placing him in the time scale of Rs. 4000-6000 as was done earlier.

2. Respondent No.2 was required to engage a person for the post of Welfare Organizer Class -III. It appears that on 29th March, 2003 interview call letter was issued to the petitioner. On what basis the petitioner received the call letter is not borne out from the record. However, the petitioner responded to the said interview call. He was interviewed and appointed to the said post by an order dated 11.04.2003. The appointment was on ad-hoc basis and on probation for a period of one year. The appointment was in the pay scale of Rs. 4000-6000. The petitioner reported for duty and started discharging his duties.

3. Subsequently, however the State Government found that the appointment ought not to have been granted in the pay scale of Rs. 4000-6000 and appointment ought to have been as fixed pay of Rs. 4000/- per month. Along with the reply statement, a communication dated 20.12.2001 made to respondent No.2 is sought to be relied upon for the said purpose.

3.1 By the impugned order dated 31.03.2004, the respondents recalled the earlier order dated 11.04.2003 appointing the petitioner on the post in question in pay scale of Rs. 4000-6000 and instead placed him on the fixed salary of Rs. 4000/- per month.

4. At the outset, it can be seen that the petitioner who was earlier appointed in the time scale of Rs. 4000-6000 came to be downgraded since the said order was recalled and he was ordered to be paid Rs.4000/- per month as fixed salary without any allowances. It can be seen that such order could not have been passed without affording an opportunity of hearing to the petitioner. Admittedly, the petitioner was not heard before his appointment in the time scale was cancelled and he was placed in the fixed salary. The action of the Government, therefore, cannot be sustained. The impugned order dated 31.03.2004 is quashed with consequential benefits. It will be open for the respondents to pass fresh order in accordance with law after giving an opportunity of

hearing to the petitioner. It will be open for the respondents to examine and look into the aspect of the manner in which the petitioner was being called for interview. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

[Akil Kureshi, J.]

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